

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

|                            |   |                                        |
|----------------------------|---|----------------------------------------|
| <b>HELEN MOODY, et al,</b> | ) |                                        |
|                            | ) |                                        |
| <b>Plaintiffs,</b>         | ) |                                        |
|                            | ) |                                        |
| <b>vs.</b>                 | ) | <b>CIVIL ACTION No.: 2:07cv318-WHA</b> |
|                            | ) |                                        |
| <b>ALLSTATE INSURANCE</b>  | ) |                                        |
| <b>COMPANY, et al,</b>     | ) |                                        |
|                            | ) |                                        |
| <b>Defendants.</b>         | ) |                                        |

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**PLAINTIFFS' MOTION FOR LEAVE TO AMEND COMPLAINT**

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**COME NOW** the Plaintiffs Helen Moody and Catherine Keaton (“Plaintiffs”) and, pursuant to Fed. R. Civ. P. 15 and Local Rule 15.1, hereby move this Honorable Court for leave to amend their Complaint to add United Services Automobile Association (“USAA”) as a defendant in this matter. In accordance with Local Rule 15.1, an original and one copy of the First Amended Complaint are attached collectively as Exhibit A. As grounds for the motion, Plaintiffs state as follows:

1. The Plaintiffs were the driver and passenger in an automobile on or about April 23, 2005, when the accident made the basis of this lawsuit occurred.
2. USAA was the insurer of that automobile under policy number 012967576.

3. The USAA policy provides uninsured motorist coverage applicable to this accident and the plaintiffs have asserted a claim for such coverage. Defendant Allstate apparently may contend that the USAA coverage is primary.

4. Adding USAA as a defendant would allow a complete adjudication of this matter as it relates to uninsured motorist coverage issues arising from the subject accident.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully request that this Honorable Court grant the present Motion and allow Plaintiffs to amend their Complaint to add their claims against Defendant USAA.

Respectfully submitted this 26th day of March 2008.

s/ Mark M. Hogewood

Mark M. Hogewood  
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[mh@wallacejordan.com](mailto:mh@wallacejordan.com)  
Attorney for Plaintiffs

**OF COUNSEL:**

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Telephone: (205) 870-0555  
Facsimile: (205) 871-7534

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| HELEN MOODY, et al, | ) |                                 |
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| Plaintiffs,         | ) |                                 |
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|                     | ) |                                 |
| ALLSTATE INSURANCE  | ) |                                 |
| COMPANY, et al,     | ) |                                 |
|                     | ) |                                 |
| Defendants.         | ) |                                 |

CERTIFICATE OF SERVICE

I certify that on this 26th day of March, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: **Edward C. Hixon, Esq., Slaten & O'Connor, P.C., Winter Loeb Building, Ste. 101, 105 Tallapoosa Street, Montgomery, AL 36104**; and I certify that I have mailed by U.S. Mail the foregoing to the following non-CM/ECF participant: **Shawn Thornton, 407 Green Ridge Road, Montgomery, AL 36109**.

Respectfully submitted,

s/ Mark M. Hogewood

Mark M. Hogewood  
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Post Office Box 530910  
Birmingham, Alabama 35253  
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**IN THE UNITED STATES DISTRICT COURT  
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|                                    |   |                                        |
|------------------------------------|---|----------------------------------------|
| <b>HELEN MOODY, an individual;</b> | ) |                                        |
| <b>CATHERINE KEATON, an</b>        | ) |                                        |
| <b>individual,</b>                 | ) |                                        |
|                                    | ) |                                        |
| <b>Plaintiffs,</b>                 | ) |                                        |
|                                    | ) |                                        |
| <b>vs.</b>                         | ) | <b>Civil Action No.: 2:07cv318-WHA</b> |
|                                    | ) |                                        |
| <b>ALLSTATE INSURANCE COMPANY,</b> | ) |                                        |
| <b>a corporation; SHAWN DEE</b>    | ) |                                        |
| <b>THORNTON, an individual;</b>    | ) |                                        |
| <b>UNITED STATES AUTOMOBILE</b>    | ) |                                        |
| <b>ASSOCIATION, a corporation,</b> | ) | <b>Jury Trial Demanded</b>             |
|                                    | ) |                                        |
| <b>Defendants.</b>                 | ) |                                        |

**FIRST AMENDED COMPLAINT**

COME NOW Plaintiffs Helen Moody and Catherine Keaton, by and through their attorneys, complaining of Defendants Allstate Insurance Company (“Allstate”), Shawn Dee Thornton (“Thornton”) and United Services Automobile Association (“USAA”), and state as follows:

1. Plaintiffs Helen Moody and Catherine Keaton (“Plaintiffs”) are residents of Brooklyn, New York and are over the age of nineteen (19) years.
2. Defendant Allstate is an Illinois corporation, doing business in Alabama, with its headquarters in Chicago, Illinois.

3. Defendant Thornton is a resident of Montgomery Alabama and is over the age of nineteen years (19) years.

4. Defendant USAA is a Delaware corporation doing business in Alabama, with its headquarters in San Antonio, Texas.

### **STATEMENT OF FACTS**

5. On or about April 23, 2005, Plaintiffs Helen Moody and Catherine Keaton (collectively "Plaintiffs") were traveling eastbound on Vaughn Road, near the intersection of East Boulevard in Montgomery, Alabama.

6. Defendant Shawn Dee Thornton ("Thornton") was also traveling eastbound on Vaughn Road and was traveling behind Plaintiffs. Thornton failed to stop his vehicle and struck Plaintiffs' vehicle.

7. As a direct and proximate result of the accident, Plaintiffs suffered severe personal injuries, severe physical pain, suffering and mental anguish and will continue to do so in the future. Plaintiffs have incurred medical expenses and will continue to do so in the future.

### **COUNT I - NEGLIGENCE**

8. Plaintiffs re-allege and adopt by reference all allegations and averments contained hereinabove.

9. At said time and place, Defendant Thornton negligently caused a vehicle to collide with Plaintiffs' vehicle.

10. As a proximate result of Thornton's negligence, Plaintiffs were caused to sustain severe personal injuries, have incurred substantial medical expenses, and suffered greatly, both physically and emotionally. Plaintiffs continue to suffer pain and will continue to suffer from pain for as long as they will live. Plaintiffs sustained permanent disabilities.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs Helen Moody and Catherine Keaton demand judgment against Defendants for a fair and reasonable amount of compensatory damages, plus costs of this action and any additional and further relief as the Court should deem appropriate.

### **COUNT II - WANTONNESS**

11. Plaintiffs re-allege and adopt by reference all allegations and averments contained hereinabove.

12. At said time and place, Defendant Thornton wantonly caused a vehicle to collide with Plaintiffs' vehicle.

13. As a proximate result of Thornton's wantonness, Plaintiffs were injured and damaged as alleged in paragraph 10 above.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs Helen Moody and Catherine Keaton demand judgment against Defendants for a fair and reasonable amount of compensatory damages, mental anguish damages, punitive damages, attorneys fees, costs and any additional and further relief as the Court should deem appropriate.

**COUNT III - UM / UIM CLAIM AGAINST ALLSTATE**

14. Plaintiffs re-allege and adopt by reference all allegations and averments contained hereinabove.

15. Defendant Allstate is the uninsured/underinsured motorist carrier for Plaintiff Helen Moody, under policy number 043875328, which includes coverage for all claims herein.

16. Defendant Allstate has received notice of Plaintiffs' claims.

17. The amount of the policies and coverage which is available to Plaintiffs is due from Defendant Allstate for their injuries and damages.

18. This Count is based upon Section 32-7-23, Code of Alabama, (1975), as amended.

WHEREFORE, Plaintiffs demand judgment against Defendant Allstate in the full amount of all policies or coverages which are available to cover the claims referred to herein above and their costs.

**COUNT IV - UM / UIM CLAIM AGAINST USAA**

19. Plaintiffs re-allege and adopt by reference all allegations and averments contained hereinabove.

20. Defendant USAA is the uninsured/underinsured motorist carrier, under policy number 012967576, of the vehicle the Plaintiffs occupied at the time of the accident. That policy provides such coverage for the claims asserted herein.

21. Defendant USAA has received notice of Plaintiffs' claims.

22. The amount of the policies and coverage which is available to Plaintiffs is due from Defendant USAA for their injuries and damages.

23. This Count is based upon Section 32-7-23, Code of Alabama, (1975), as amended.

WHEREFORE, Plaintiffs demand judgment against Defendant USAA in the full amount of all policies or coverages which are available to cover the claims referred to herein above and their costs.

Respectfully submitted this \_\_\_\_\_ day of March 2008.

s/ Mark M. Hogewood

Mark M. Hogewood  
ASB-7651-E36M  
[mh@wallacejordan.com](mailto:mh@wallacejordan.com)  
Attorney for Plaintiffs



**OF COUNSEL:**

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Birmingham, Alabama 35253

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Facsimile: (205) 871-7534

**JURY TRIAL DEMANDED**

*s/ Mark M. Hogewood*

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Mark M. Hogewood

ASB-7651-E36M

[mh@wallacejordan.com](mailto:mh@wallacejordan.com)

Attorney for Plaintiffs

**OF COUNSEL:**

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Facsimile: (205) 871-7534

**PLEASE SERVE THE FOLLOWING ADDITIONAL DEFENDANT BY  
CERTIFIED MAIL AT:**

USAA

9800 Fredericksburg Road

San Antonio, TX 78288

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Respectfully submitted,

s/ Mark M. Hogewood

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